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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,068	08/22/2003	Michael L. White	030303	8441

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EXAMINER

LEV, BRUCE ALLEN

ART UNIT PAPER NUMBER

3634

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/646,068

Applicant(s)

WHITE ET AL.

Examiner

Bruce A. Lev

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/13/04.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

BRUCE A. LEV
PRIMARY EXAMINER

DETAILED ACTION***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "extension pole" as set forth in claim 20 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

Claims 18 and 19 are rejected under 35 U.S.C. **112**, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is a combination/sub-combination issue therefore rendering the claims as vague and indefinite. The subcombination of "an assembly" is being claimed comprising a power tool...***for*** actuating a piston *within a barrel*". However, the support device is stated as "located...within the barrel" (claim 18, lines 4-5), and "connected to the barrel" (claim 19, line 2).

Claim Rejections - 35 USC § 103

Claims 1-6, 8, and 10-17 are rejected under 35 U.S.C. **103(a)** as being unpatentable over ***Sprague 2004/0064932***.

Sprague sets forth a support device comprising a shaft 20 having threads at a first end, a support member 22 integral on a second end having curved, planar, and concave portions, along with a hook portion (inclusive of the distal end portion of member 22); a pusher 106 including a driving end and an extension portion, a notch, a receiving means; extension means, support means, retention means, being tapered (in as much as the applicant's is tapered), and made from materials including steel. ***What Sprague does not set forth*** is the pusher being *integral* to the second end of the shaft. However, the examiner takes the position that forming members as one "integral" member, or vice versa,

would have merely been an *integration of parts* and is *not* considered as patentable subject matter within an apparatus claim.

Claims 7 and 9 are rejected under 35 U.S.C. ***103(a)*** as being unpatentable over ***Sprague in view of Malmgren 5,887,677***.

Sprague sets forth the support device, as advanced above, except for the ring portion. However, ***Malmgren teaches*** forming a ring portion 6 upon a like support device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the support device of Sprague by incorporating a ring portion, as taught by Malmgren, in order to provide means to attach a lifeline or rope thereto, and thereby increase the safety of the support device.

Claims 18-20 are rejected under 35 U.S.C. ***103(a)*** as being unpatentable over ***Sprague in view of Malmgren further in view of Chun 5,135,150***.

Sprague in view of Malmgren set forth the support device, as advanced above, except for the powder driven tool. However, ***Chun teaches*** using a powder driven tool to drive a support device into a pole. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the assembly of Sprague in view of Malmgren by incorporating a

powder driven tool, as taught by Chun, in order to improve the ease as to which the support is driven into a pole or tree.

Response to Amendment

The remarks filed December 10, 2004 have been considered but are not deemed to be persuasive.

As concerns remarks pertaining to the pusher being *integral* to the second end of the shaft, the examiner reiterates the position that forming members as one "integral" member, or vice versa, is viewed as an ***integration of parts*** and is ***not*** considered as patentable subject matter within an apparatus claim.

As concerns remarks pertaining to the ring of Malmgren, the examiner takes the position that the configuration of Malmgren can also retain a rope therethrough, and that when weight is placed upon the support member of Malmgren, this "ring" will retain the support member upon the rope in the same manner as the applicant's device.

Conclusion

Applicant's amendments, including "the pusher being *integral* to the second end of the shaft", necessitated the new rejections, as advanced above. Therefore, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

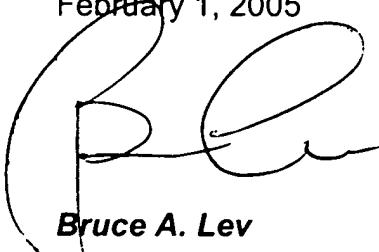
Art Unit: 3634

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

February 1, 2005

A handwritten signature in black ink, appearing to be 'B. Lev', written over a horizontal line.

Bruce A. Lev

Primary Examiner

Group 3600